

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
JEREMY LEVIN and DR. LUCILLE LEVIN, :
Plaintiffs, :
-against- :
-----x

BANK OF NEW YORK, JPMORGAN :
CHASE, SOCIETE GENERALE and :
CITIBANK, :
Defendants. :
-----x

THE BANK OF NEW YORK MELLON, et al., :
Third-Party Plaintiffs, :
-against- :
STEVEN M. GREENBAUM, et al., :
Third-Party Defendants. :
-----x

THE BANK OF NEW YORK MELLON, et al., :
Third-Party Plaintiffs, :
-against- :
THE ESTATE OF JAMES SYLVIA and :
LYNNE MICHOL SPENCER, et al., :
Third-Party Defendants. :
-----x
-----x

THE BANK OF NEW YORK MELLON, et al., :
Third-Party Plaintiffs, :
-against- :
-----x

Case No. 09 Civ. 5900 (RPP)
(FILED PARTIALLY UNDER
SEAL DUE TO CONFIDENTIAL
INFORMATION PER ORDER
DATED JANUARY 21, 2010)

**SUPPLEMENTAL
DECLARATION OF DAVID B.
MISLER IN SUPPORT OF
THE PLAINTIFFS AND THE
GREENBAUM AND ACOSTA
AND HEISER JUDGMENT
CREDITORS' JOINT
MOTION FOR PARTIAL
SUMMARY JUDGMENT AND
TURNOVER OF PHASE ONE
ASSETS**

ESTATE OF MICHAEL HEISER, et al., :
-----x

Third-Party Defendants. :
-----x

JPMORGAN CHASE BANK, N.A., :
-----x

Third-Party Plaintiff, :
-----x

-against- :
-----x

[REDACTED], et al., :
-----x

Third-Party Defendants. :
-----x

CITIBANK, N.A., :
-----x

Third-Party Plaintiff, :
-----x

-against- :
-----x

[REDACTED], et al., :
-----x

Third-Party Defendants. :
-----x

SOCIETE GENERALE, :
-----x

Third-Party Plaintiff, :
-----x

-against- :
-----x

JPMORGAN CHASE BANK, N.A., :
-----x

Third-Party Cross-Claim :
Defendant, and
-----x

[REDACTED], et al., :
-----x

Third-Party Defendants. :
-----x

THE BANK OF NEW YORK MELLON, :
-----x

Third-Party Plaintiff, :
-against- :

[REDACTED], et al., :

Third-Party Defendants. :
-----X

I, DAVID B. MISLER, an attorney admitted to practice law *pro hac vice* in this Court, declare pursuant to 28 U.S.C. § 1746 as follows:

1. I am an associate with the law firm of DLA Piper LLP (US), and I am counsel for the Estate of Michael Heiser, *et al.* (the “Heisers”). I was admitted to the state bar of Maryland in 2008, and I am a member in good standing of the Maryland State Bar. I was also admitted to practice *pro hac vice* before this Court by Order dated June 10, 2010. I make this supplemental declaration in support of the Plaintiffs and the Greenbaum and Acosta and Heiser Judgment Creditors’ Joint Motion for Partial Summary Judgment and Turnover of Phase One Assets (the “Motion”) of even date herewith.¹

2. As more fully set forth in the Misler Declaration, as part of their support and consent for the Motion, the Heisers have agreed to withdraw their claims to the Phase One Assets (but solely with respect to the Phase One Assets) in the turnover proceedings filed against the Banks and identified in paragraphs 14-16 of the Misler Declaration conditioned upon the terms as more fully set forth in the Misler Declaration.

3. In addition, the Heisers and Citibank, BONY, and JPMorgan, were parties to a garnishment proceeding in the United States District Court for the District of Maryland which was subsequently transferred to this Court in the matter styled Estate of Michael Heiser, et al. v.

¹ Unless otherwise defined, capital terms have the meaning ascribed to them in the Declaration of David B. Misler in Support of the Plaintiffs and the Greenbaum and Acosta and Heiser Judgment Creditors’ Joint Motion for Partial Summary Judgment and Turnover of Phase One Assets (the “Misler Declaration”).

JPMorgan Chase Bank, N.A., et al., case no. 11-cv-02570 (LBS) (the “Transferred Maryland Action”).

4. The Banks have requested that the Heisers file this supplemental declaration to clarify that, in accordance with the Settlement Agreement, and as part of their support and consent for the Motion, the Heisers have also agreed to withdraw their claims to the Phase One Assets (but solely with respect to the Phase One Assets) in the Transferred Maryland Action. In accordance with the Settlement Agreement the withdrawal of the Heisers’ claims to the Phase One Assets in the Transferred Maryland Action is conditioned upon the Court’s entry of partial summary judgment in favor of the Greenbaum and Acosta Judgment Creditors in connection with the Motion with respect to all of the Phase One Assets. If the Court declines to grant the relief requested in the Motion, the Heisers’ withdrawal shall be null and void.

Dated: Baltimore, Maryland
June 17, 2011

/s/ David B. Misler
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